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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,418	07/09/2003	Craig P. Nadel	NN001USU	1280

45180 7590 04/07/2005  
GRIMES & BATTERSBY, LLP  
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EXAMINER
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CHAMBERS, TROY

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/616,418

**Applicant(s)**

NADEL, CRAIG P.

**Examiner**

Troy Chambers

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,8-15,21 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,8-15,21 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02/14/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Applicant's cancellation of claims 4-7, 16-20 and 22-24 has been acknowledged.
2. The drawings filed 02/14/05 are accepted.

***Information Disclosure Statement***

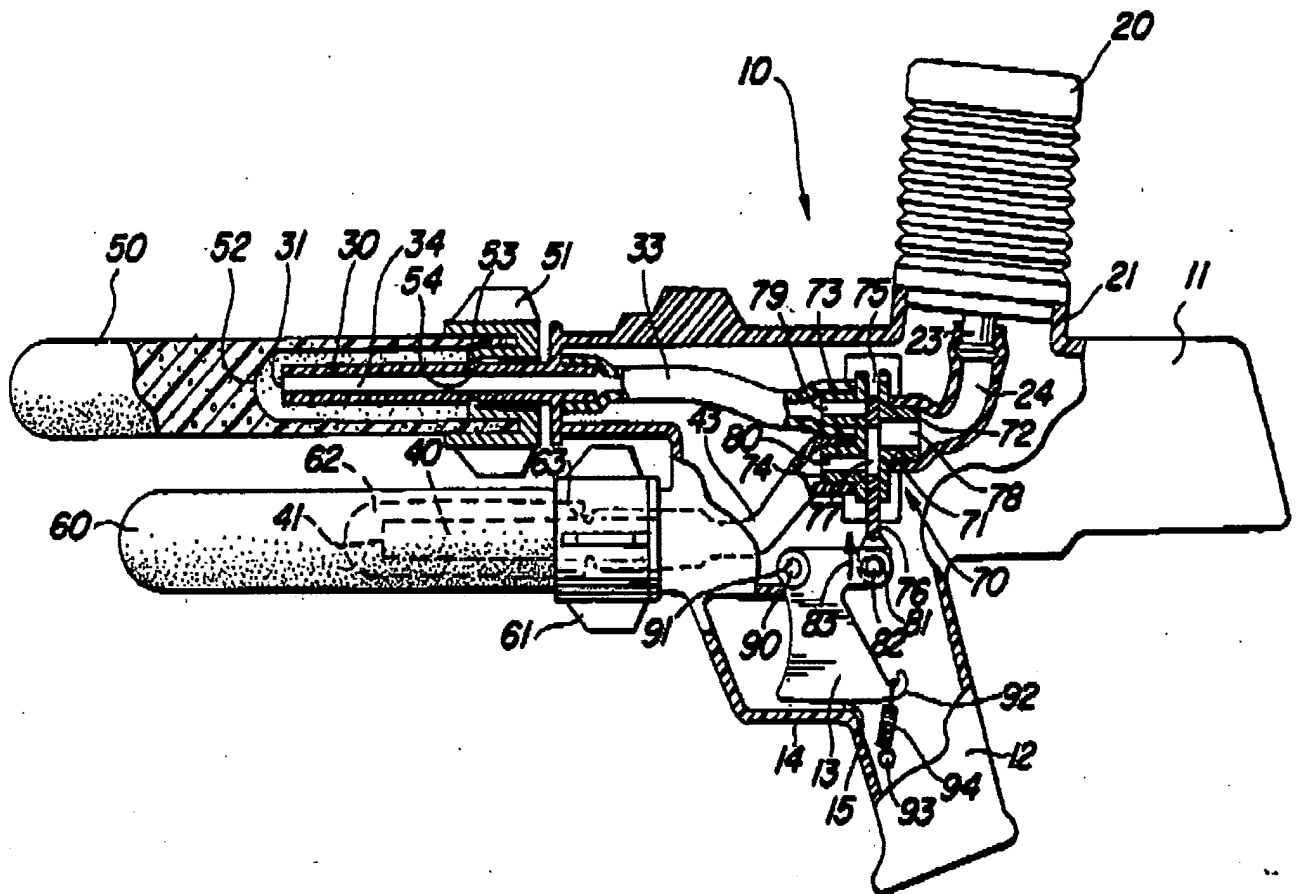
1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the examiner on form PTO-892 has cited the references, they have not been considered.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 10-15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5343850 issued to Steer in view of U.S. 2844710 issued to Zinsser. Steer discloses a projectile launcher as disclosed below.



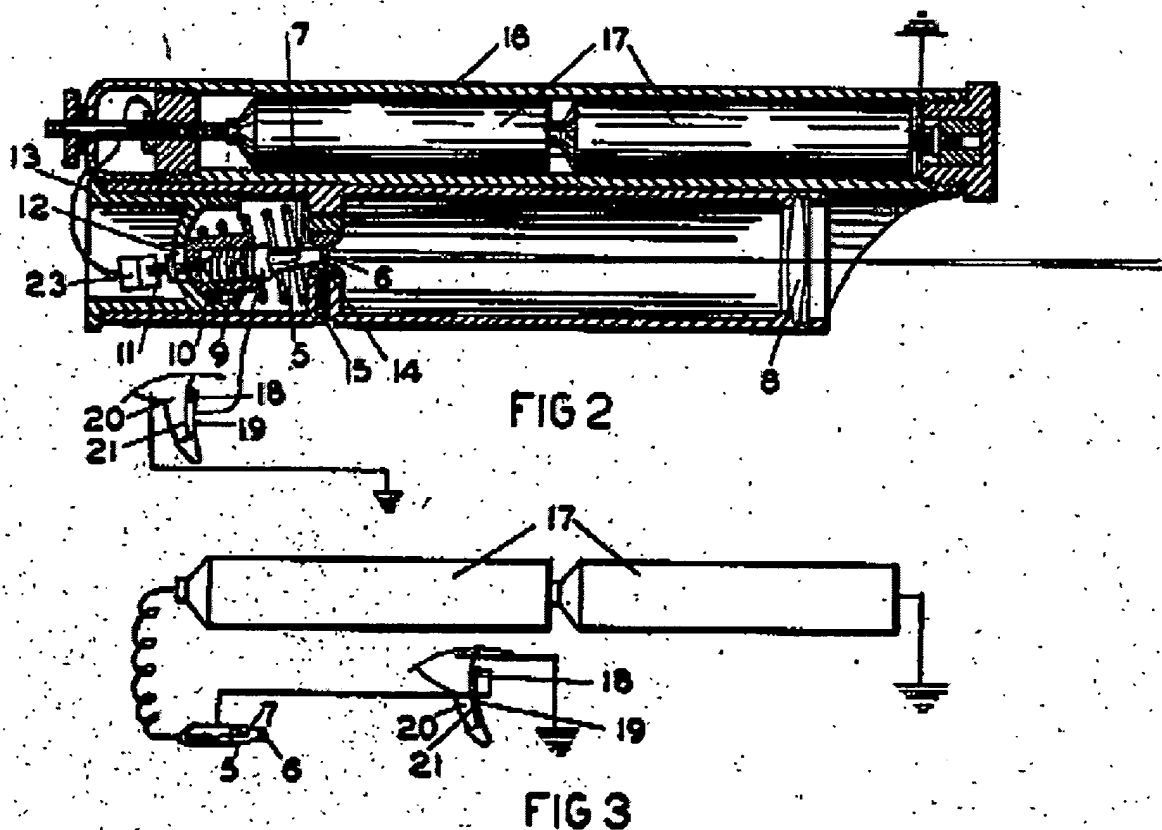
With respect to claim 1, Steer discloses:

A projectile launcher	10
Elongated barrel	30, 40
Forcibly launching means (defined in claims 2 and 3)	20, 70

The pressurized air bellows 20 operates in response to a pulling of the trigger and is thus "hand operated". Although claim 1 recites the term "audiovisual", applicant has elected a species covering only a visual stimulus. Hence, with respect to the

prosecution of the presently elected claims, “audiovisual” refers to the audio component of the device only.

However, Steer does not disclose the means for generating an audiovisual stimulus at about the same time as the launch of at least one projectile. Zinsser discloses such a means including a trigger-actuated (col. 2, ll. 33-43) light bulb 5 connected to batteries 17.



At the time of the invention, one of ordinary skill in the art would have found it obvious to provide the projectile launcher 5 with the trigger-actuated audiovisual stimulus of

Zinsser. The suggestion/motivation for doing so would have been to mark the spot at which the launcher would be directed.

4. With respect to claims 2 and 3, refer to the rejection of the forcibly launching means of claim 1.

5. With respect to claim 10, Steer discloses a projectile 50 comprising a rocket.

6. With respect to claim 11, refer to claims 1 and 3, wherein the barrel 30, 40 appears to conform to the shape of the inside of the projectile.

7. With respect to claim 12, Steer discloses a soft foam projectile 50 (col. 5, ll. 52-54).

8. With respect to claims 13 and 14, refer to the rejection of the means for generating an audiovisual stimulus of claim 1.

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steer and Zinsser as applied to claims 1, 13 and 14 above, and further in view of U.S. Patent No. 5229531 issued to Song. Steer discloses a launcher as described above. Zinsser discloses audiovisual means including a flashlight tube 3. However, the flashlight tube 3 is not transparent. Song discloses a transparent housing (col. 2, ll. 29-38). At the time of the invention, one of ordinary skill in the art would have found it obvious to make the flashlight tube 3 of Steer transparent. The suggestion/motivation for doing so would have been to allow the user to view the contents located therein.

10. With respect to claim 21, both Zinsser discloses a trigger for activating both the firearm and the audiovisual stimulus as described in the rejection of claim 1.

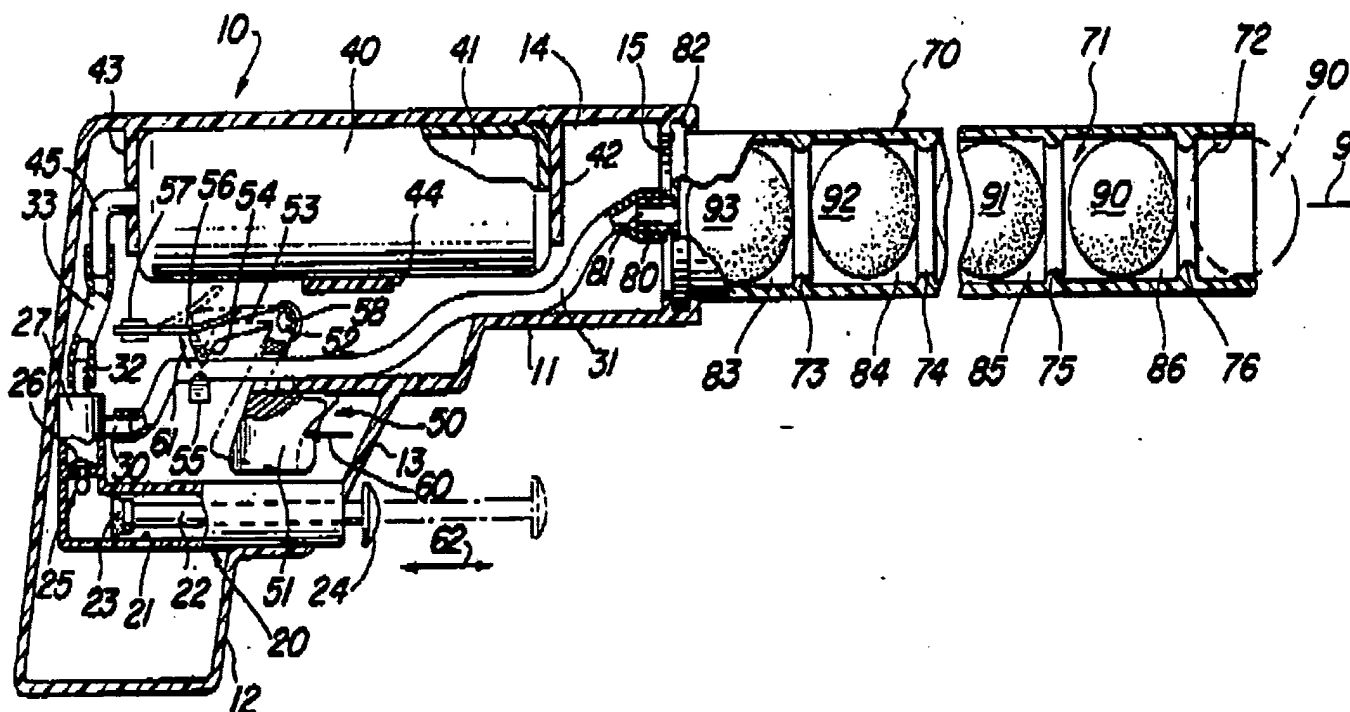
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11. Claim 1-3, 8-15, 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5343849 issued to Steer in view of Zinsser.

Steer discloses:

With respect to claim 1, Steer discloses:

A projectile launcher	10
Elongated barrel	70
Forcibly launching means (defined in claims 2 and 3)	20, 25



12. However, Steer does not disclose the means for generating an audiovisual stimulus at about the same time as the launch of at least one projectile. Zinsser discloses such a means including a trigger-actuated (col. 2, ll. 33-43) light bulb 5 connected to batteries 17.

At the time of the invention, one of ordinary skill in the art would have found it obvious to provide the projectile launcher 5 with the trigger-actuated audiovisual stimulus of Zinsser. The suggestion/motivation for doing so would have been to mark the spot at which the launcher would be directed.

13. With respect to claims 2 and 3, refer to the rejection of the forcibly launching means of claim 1.

14. With respect to claim 8, Steer discloses a spherical projectile 90-93.

15. With respect to claim 9, refer to Fig. 1 of Steer.

16. With respect to claim 10, a missile is defined as "an object (as a weapon) thrown or projected usually so as to strike something at a distance." Hence, the projectiles 90-93 qualify as missiles.

17. With respect to claim 11, refer to Fig. 1 of Steer.

18. With respect to claim 12, refer to Steer, col. 4, line 39.

19. With respect to claims 13 and 14, refer to the rejection of the means for generating an audiovisual stimulus of claim 1.

20. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steer and Zinsser as applied to claims 1, 13 and 14 above, and further in view of U.S. Patent No. 5229531 issued to Song. Steer discloses a launcher as described above. Zinsser discloses audiovisual means including a flashlight tube 3. However, the flashlight tube 3 is not transparent. Song discloses a transparent housing (col. 2, ll. 29-38). At the time of the invention, one of ordinary skill in the art would have found it obvious to make



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the flashlight tube 3 of Steer transparent. The suggestion/motivation for doing so would have been to allow the user to view the contents located therein.

21. With respect to claim 21, both Zinsser discloses a trigger for activating both the firearm and the audiovisual stimulus as described in the rejection of claim 1.

22. With respect to claim 25, Steer discloses:

A projectile launcher	10
A projectile	90-93
Elongated cylindrical barrel	70
Forcibly launching means (defined in claims 2 and 3)	20, 24, 40, 53, 54, 56.

The pressure release valve 53, 54 is connected to an activation switch comprising a trigger 51. Steer does not disclose the means for generating an audiovisual stimulus. However, Zinsser discloses such a device as described above. It would have been obvious to combine both Steer and Zinsser to arrive at the claimed device for the reasons stated above.

### ***Response to Arguments***

23. Applicant's arguments filed 02/14/05 have been fully considered but they are not persuasive. Applicant argues: "It should be appreciated that the purpose of the visual stimulus of the present invention is entirely different, and that the Zinsser reference actually teaches away from the intended purpose of applicant's visual stimulus." The Examiner responds that the visual stimulus (flash of light) of Zinsser is momentary in that it only lasts as long as the trigger is pulled. Whether or not the light distracts,

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disorients or startles an individual is immaterial and not given patentable weight since such intended reactions do not result in a structural change over the prior art. In any event, the light produced by the Zinsser device is fully capable of startling a person sleeping in the dark or an animal such as a deer walking in the woods.

***Conclusion***

24. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (703) 308-5870. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (703) 306-4198.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-

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4177. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.



MICHAEL J. CASSIVE  
SUPERVISORY PATENT EXAMINER